

1 JOSEPH MIZZONE # 68549
 2 HIGH DESERT STATE PRISON
 3 PO BOX 650, INDOAN SPRING, NV. 89070

4 Petitioner in Pro Se

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9 Case No. 3:15-CV-00499-MMD-W6C

10 JOSEPH MIZZONE,)
 11 Petitioner,,)
 12 -vs-)
 13 STATE OF NEVADA et al,)
 14 Respondents.)

**MOTION FOR
 APPOINTMENT OF COUNSEL**
§ 1983 CIVIL RIGHTS
PURSUANT TO 42 USC § 1983

15 COMES NOW Petitioner, JOSEPH MIZZONE, in pro se, and moves
 16 this Court for an order appointing him counsel in and for the instant § 2254
 17 habeas corpus proceeding.

18 This motion is made and based upon 18 U.S.C. § 3006A(g), 28 U.S.C.
 19 § 1915(e)(1), 28 U.S.C. § 2254(h); all papers, pleadings and documents on file
 20 herein; and the following points and authorities.

21 **POINTS AND AUTHORITIES**

22 **I. STATEMENT OF FACTS**

23 Petitioner is unable to afford counsel. See Application to Proceed In
 24 Forma Pauperis on file herein.

25 The substantive issues and procedural matters in this case are too complex
 26 for Petitioner's comprehension and abilities.

27 Petitioner, by reason of his incarceration, cannot investigate, take
 28 depositions, or otherwise discover evidentiary materials on his own accord.

Petitioner's sentence structure is 3 to 13 years.

There are ✓ are not additional facts attached hereto on additional page(s) to be incorporated herein.

Counsel could not only assist Petitioner with a much better presentation of the substantive and procedural issues before this Court, e.g., merits of the claims, AEDPA's § 2254(d) test, exhaustion, etc., but counsel would likewise make much easier this Court's task of discerning the issues and adjudicating them as upon a competent counsel's ability to present same to the Court.

The ends of justice would best be served in this case via the appointment of counsel, as Petitioner's sentence structure, in conjunction with the complexities of the legal issues herein, plead for such an appointment.

II. ARGUMENT FOR APPOINTMENT

Appointment of counsel in § 2254 cases is authorized within 18 U.S.C. § 3006A(g) and 28 U.S.C. §§ 1915(e)(1); 2254(h). This Court may appoint counsel where the "interests of justice" so require. Jeffers v. Lewis, 68 F.3d 295, 297-98 (9th Cir. 1995). This interest is best served when indigent petitioners who are unable to "adequately present their cases" are appointed counsel to do so for them. III.

Although appointment is usually within this Court's sound discretion, a handy formula for this Court's consideration is a balancing of the complexities of the issues with a consideration of the severity of the petitioner's penalty. Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.), cert. denied, 481 U.S. 1023 (1987). Ultimately, however, absent a due process implication, this Court has discretion to appoint counsel when it feels that it promotes justice in doing so. III. See Brown v. United States, 623 F.2d 54, 61 (9th Cir. 1980)(court must appoint counsel where the complexities of the case are such that denial of counsel would amount to denial of due process); Hawkins v. Bennett, 423 F.2d 948 (8th Cir. 1970)(counsel must be appointed where petitioner is a person of

1 such limited education as to be incapable of presenting his claims fairly).

2 Petitioner submits that the facts above, in conjunction with these legal
3 principles, compel appointment of counsel. Indeed, the complexities of the
4 issues in relation to Petitioner's sentence, implicate the need of counsel to
5 promote not only justice, but fairness, as well. Jeffers, 68 F.3d at 297-98.

6 **III. CONCLUSION**

7 For the reasons set forth above, this Court should appoint counsel to
8 represent Petitioner in and for all further proceedings in this § 2254 habeas
9 corpus action.

10 Dated this 9th day of JANUARY, 20017.

11 Respectfully submitted,

12 Joseph Mizion #16549
13 JOSEPH MIZION
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15 Petitioner In Pro Se

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CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing APPOINTMENT OF COUNSEL 8/1983 CIVIL RIGHTS PUSANT 42 U.S.C. § 1983 to the below address(es) on this 9th day of January, 20017, by placing same into the hands of prison staff for posting in the U.S. Mail, pursuant to FRCP 5(b):

1st Clerk U.S. District Court
DISTRICT OF NEVADA
400 South Virginia Street Room #301
Reno, Nevada 89501

Counsel for JOSEPH MIZZONE

(☒) check for additional addresses below

Joseph Mizzone 68549
 *

Same In Pro Se

ADDRESS(ES) Continued from Above: (If applicable)

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(COURT CLERK
 Please E-File TO ABOVE ADDRESSES.
 Thank You)